



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

August 6, 1948

Hon. W. K. Baldridge
County Attorney
Denton County
Denton, Texas

Opinion No. V-652

Re: Authority of the Commissioners' Court to use the described road bond funds to erect bridges, culverts, and approaches to connect private property to farm-to-market roads.

Dear Sir:

Reference is made to your recent request which reads, in part, as follows:

"Pursuant to the provisions of Article 3, Section 52, sub-section (c) of the Constitution of Texas, and Article 752a, R. C. S. 1925, (Acts 1926, 39th Leg., 1st C.S., P. 23, Ch. 16, #1) an election was held in Denton County, Texas, on the 5th day of November, 1946, and the following issue was carried by more than a two-thirds majority, to-wit: 'For the issuance of road bonds and the levy of ad valorem taxes in payment thereof, to-wit, \$250,000 road bonds for the purpose of purchasing rights-of-way and to pay all necessary costs and damages incident thereto.' The bonds were issued and sold and the proceeds were deposited in a fund known as 'Right-of-way fund.' The said fund has been partially consumed and expended in purchasing right-of-way for farm-to-market roads and in payment of condemnation awards.

"The title to the roads and right-of-way aforesaid was placed in the State of Texas, the State of Texas built the roads and has assumed the obligation to repair and maintain said roads.

"As a result of the construction of the roads, drainage areas and ditch back slopes, travel from the road to private adjoining property became difficult and impossible in some instances. At the request of some owners of adjoining private property, some county commissioners erected culverts, bridges and driveways across ditches connecting private property with the roadway . . .

" . . . I shall appreciate it very much if you will give me your opinion as to whether the County Commissioners Court can expend any portion of the said 'Right-of-way Fund' (derived from the sale of bonds as aforesaid) for the construction and erection of bridges, culverts and approaches connecting private property with State designated and maintained Farm-to-market roads. I call your attention to the fact that the bridges and culverts are constructed not upon private property but in and upon the highway right-of-way and in the ditches and drainage areas of said right-of-way."

Article 6674q-4 provides, in part, as follows:

"All further improvement of said State Highway System shall be made under the exclusive and direct control of the State Highway Department and with appropriations made by the Legislature out of the State Highway Fund. Surveys, plans and specifications and estimates for all further construction and improvement of said system shall be made, prepared and paid for by the State Highway Department. No further improvement of said system shall be made with the aid of or with any moneys furnished by the counties except the acquisition of right-of-ways which may be furnished by the counties, their subdivisions or defined road districts."

It is stated by the court in the case of *Gabbert v. City of Brownwood*, 176 S.W.(2d) 344 that:

"It is settled by the decisions that

the last quoted statutory provision did operate to transfer the former jurisdiction of counties and/or county commissioners' courts over state highways within county limits to the State Highway Commission."

The bond issue in question was voted for the purpose of "purchasing rights-of-way and to pay all necessary costs and damages incident thereto."

The Court, in passing upon this question in the case of Fletcher v. Ely, 53 S.W.(2d) 817, writ refused, lays down this well-settled proposition:

"That, when the voters thus speak, the proceeds of the bond issue are 'ear marked' with the character of a trust fund which may not be diverted to another purpose or project, any such attempt will be enjoined by a court of equity. The result thus obtained has been referred to as having the binding effect and force of a contract. Black v. Strength, 112 Tex. 188, 246 S.W. 79; 19 R. C. L. pp. 1163, 1164; Roane County Court v. O'Brien, 95 W. Va. 32, 122 S.E. 352, 355."

In view of the foregoing, it is our opinion that the County Commissioners' Court may not expend any portion of the said right-of-way fund for the construction and erection of bridges, culverts and approaches connecting private property with State designated and maintained farm-to-market roads.

SUMMARY

The County Commissioners' Court may not expend any portion of the Right-of-way Fund (derived from the sale of bonds) for the construction and erection of bridges, culverts, and approaches connecting private property with State designated and maintained farm-to-market roads. Fletcher v. Ely, 53 S.W.(2d) 817.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

APPROVED:

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